

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

SEAN C. WITMER,

Plaintiff,

v.

GREATER LAKES MENTAL  
HEALTHCARE,

Defendant.

CASE NO. C15-5039 BHS

ORDER GRANTING  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT

This matter comes before the Court on Defendant Greater Lakes Mental Healthcare's ("GLMH") motion for summary judgment (Dkt. 29). The Court has considered the pleadings filed in support of and in opposition to the motion and the remainder of the file and hereby grants the motion for the reasons stated herein.

**I. PROCEDURAL HISTORY**

On January 21, 2015, Plaintiff Sean Witmer ("Witmer") filed a complaint against GLMH asserting causes of action for violations of his right to bear arms and his right to be free from unreasonable searches and seizures under the federal and state constitutions. Dkt. 3.

On January 8, 2016, GLMH filed a motion for summary judgment. Dkt. 29. On February 11, 2016, Witmer responded. Dkt. 35. On February 12, 2016, GLMH replied and moved to strike Witmer's untimely response.<sup>1</sup> Dkt. 36.

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<sup>1</sup> The Court denies the motion to strike because GLMH is not prejudiced by the Court's consideration of the untimely brief.

## II. FACTUAL BACKGROUND

The facts are uncontested, and Witmer failed to submit any evidence in support of his opposition.

GLMH is a private, a non-profit company that provides an array of mental health services. Dkt. 31, Declaration of Glenn Czerwinski (“Czerwinski Dec.”) ¶ 2. Witmer is a former participant in GLMH’s Shelter Plus Care Program (“Program”), which is a program for mentally ill and homeless individuals in Pierce County, Washington. *Id.*, ¶ 3. The Program provides housing and mental healthcare for its participants.

Witmer started receiving services from GLMH in 2002, which included mental health services, including counseling and medication management; welfare checks; and housing support. *Id.*, ¶ 2–3. Witmer lived in an apartment owned by the Metropolitan Development Council (“MDC”), a non-profit agency that, among other things, provides housing to chronically homeless individuals. *Id.*, ¶ 3. All of the residents at the MDC-owned building were participants in GLMH’s program. *Id.*

MDC and GLMH had an agreement whereby MDC provided housing for program participants at an adjusted market rate. GLMH paid a portion of the rent and the tenant/participant paid the remainder. At the time Witmer left the program, he paid \$209 per month for rent and GLMH paid the remainder of the \$608 owed to MDC. *Id.*, ¶ 4.

The United States Department of Housing and Urban Development (“HUD”) provided Pierce County with a grant that in turn provided money to GLMH to subsidize Witmer’s rent. *Id.* In order to receive those funds, GLMH was required to comply with certain federal regulations. *Id.* The federal government, however, was not involved in the day-

1 to-day operation or management of GLMH's program or of the MDC-owned building.

2 *Id.*

3 Because GLMH did not own the building where Witmer lived, he entered into a  
4 lease directly with MDC. Similarly, GLMH was not the building's landlord and did not  
5 directly operate or maintain the building itself. Rather, GLMH administered its program  
6 to the participants who lived at the building. *Id.*, ¶ 5. GLMH also entered into an  
7 agreement with Witmer wherein he agreed (1) that "[p] ossession of weapons is not  
8 allowed;" and (2) "[tenant] will cooperate with periodic Health and Safety inspections."  
9 *Id.*, ¶ 6, Exh. 1.

10 In 2013, Witmer began to refuse to allow GLMH to conduct the required health  
11 and safety inspections. Witmer was also seen carrying a gun (in his holster) in his  
12 apartment. Both of these actions were violations of his agreement with GLMH. GLMH  
13 terminated Witmer from the Program when he continued to refuse to comply with the  
14 Program rules. *Id.*, ¶ 7. MDC then instituted eviction proceedings in Pierce County  
15 Superior Court. Dkt. Dkt. 35, Declaration of Holly E. Lynch, Exh. 1. The Pierce County  
16 Superior Court approved the eviction and issued an eviction order on May 28, 2013. *Id.*

### 17 **III. DISCUSSION**

#### 18 **A. Summary Judgment Standard**

19 Summary judgment is proper only if the pleadings, the discovery and disclosure  
20 materials on file, and any affidavits show that there is no genuine issue as to any material  
21 fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c).  
22 The moving party is entitled to judgment as a matter of law when the nonmoving party

1 fails to make a sufficient showing on an essential element of a claim in the case on which  
2 the nonmoving party has the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317,  
3 323 (1986). There is no genuine issue of fact for trial where the record, taken as a whole,  
4 could not lead a rational trier of fact to find for the nonmoving party. *Matsushita Elec.*  
5 *Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (nonmoving party must  
6 present specific, significant probative evidence, not simply “some metaphysical doubt”).  
7 *See also* Fed. R. Civ. P. 56(e). Conversely, a genuine dispute over a material fact exists  
8 if there is sufficient evidence supporting the claimed factual dispute, requiring a judge or  
9 jury to resolve the differing versions of the truth. *Anderson v. Liberty Lobby, Inc.*, 477  
10 U.S. 242, 253 (1986); *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d  
11 626, 630 (9th Cir. 1987).

12       The determination of the existence of a material fact is often a close question. The  
13 Court must consider the substantive evidentiary burden that the nonmoving party must  
14 meet at trial – e.g., a preponderance of the evidence in most civil cases. *Anderson*, 477  
15 U.S. at 254; *T.W. Elec. Serv., Inc.*, 809 F.2d at 630. The Court must resolve any factual  
16 issues of controversy in favor of the nonmoving party only when the facts specifically  
17 attested by that party contradict facts specifically attested by the moving party. The  
18 nonmoving party may not merely state that it will discredit the moving party’s evidence  
19 at trial, in the hopes that evidence can be developed at trial to support the claim. *T.W.*  
20 *Elec. Serv., Inc.*, 809 F.2d at 630 (relying on *Anderson*, 477 U.S. at 255). Conclusory,  
21 nonspecific statements in affidavits are not sufficient, and missing facts will not be  
22 presumed. *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 888-89 (1990).

1 **B. GLMH's Motion**

2 Section 1983 is a procedural device for enforcing constitutional provisions and  
3 federal statutes; the section does not create or afford substantive rights. *Crumpton v.*  
4 *Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). In order to state a claim under section 1983,  
5 a plaintiff must demonstrate that (1) the conduct complained of was committed by a  
6 person acting under color of state law and that (2) the conduct deprived a person of a  
7 right, privilege, or immunity secured by the Constitution or by the laws of the United  
8 States. *Parratt v. Taylor*, 451 U.S. 527, 535 (1981), *overruled on other grounds by*  
9 *Daniels v. Williams*, 474 U.S. 327 (1986).

10 In this case, GLMH contends that it is not subject to suit under § 1983 because it is  
11 a private actor not acting under color of law. An entity is subject to suit under § 1983  
12 when the alleged deprivation of rights is “fairly attributable” to the government. *Sutton v.*  
13 *Providence St. Joseph Med. Ctr.*, 192 F.3d 826, 835 (9th Cir. 1999). When addressing  
14 whether a private party acted under color of law, the court must start with the  
15 presumption that private conduct does not constitute governmental action. *See Harvey v.*  
16 *Harvey*, 949 F.2d 1127, 1130 (11th Cir. 1992) (“Only in rare circumstances can a private  
17 party be viewed as a ‘state actor’ for section 1983 purposes.”); *Price v. Hawaii*, 939 F.2d  
18 702, 707–08 (9th Cir. 1991) (“[P]rivate parties are not generally acting under color of  
19 state law.”). “In order for private conduct to constitute governmental action, ‘something  
20 more’ must be present.” *Sutton*, 192 F.3d at 835 (9th Cir. 1999). Courts have used four  
21 different factors or tests to identify what constitutes “something more”: (1) public  
22 function, (2) joint action, (3) governmental compulsion or coercion, and (4) governmental

1 nexus. *See Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 939 (1982); *Johnson v. Knowles*,  
2 113 F.3d 1114, 1118 (9th Cir.), *cert. denied*, 522 U.S. 996 (1997); *Parks Sch. of Bus.,*  
3 *Inc. v. Symington*, 51 F.3d 1480, 1486 (9th Cir. 1995); *Gorenc v. Salt River Project*  
4 *Agric. Improvement and Power Dist.*, 869 F.2d 503, 506 (9th Cir. 1989).

5 In *Reiner v. Mental Health Kokua*, No. CV 10-00340 DAE LEK, 2011 WL  
6 322535 (D. Haw. Jan. 31, 2011), the district court considered all four factors when  
7 determining whether a defendant similar to GLMH was a state actor for § 1983 purposes.  
8 The defendant was a “501(c) non-profit corporation, providing residential housing and  
9 rehabilitation to adults with mental disabilities” and “receive[d] federal funding from the  
10 United States Department of Housing and Urban Development . . . .” *Id.* at \*1. The court  
11 concluded that receiving federal funding and abiding by some federal regulations was  
12 insufficient to turn the private entity into a government actor. *Id.* at \*8.

13 Similarly, in *Kabbani v. Council House, Inc.*, 406 F. Supp. 2d 1189, 1191 (W.D.  
14 Wash. 2005), this Court considered whether a private landlord was a government actor  
15 because the landlord participated in a federal low-income housing program. On a motion  
16 for preliminary relief, the Court concluded that the plaintiff was unlikely to succeed in  
17 showing that the private entity was a government actor mainly because plaintiff failed to  
18 submit any evidence that any government entity or official was responsible for  
19 promulgation or enforcement of the “House Rules” that led to plaintiff’s eviction. *Id.* at  
20 1194–95. Instead, the “House Rules” were enforced by the complex manager, “who has  
21 the ‘ultimate authority’ to make decisions regarding tenant evictions.” *Id.* at 1194.  
22

1 GLMH contends that it is not a government actor under *Reiner*, *Kabbani*, and  
2 numerous other cases. The Court agrees. While GLMH receives federal funding and  
3 must follow certain federal regulations, courts have consistently held that such  
4 involvement by the federal government does not turn a private entity into a government  
5 actor. Moreover, GLMH was not Witmer's landlord and was not involved in the eviction  
6 proceeding, which weighs against a finding of government action. Therefore, the Court  
7 grants GLMH's motion for summary judgment because Witmer has failed to show that  
8 GLMH is subject to suit under § 1983.

9 Finally, Witmer argues that his landlord violated the state landlord-tenant laws.  
10 Dkt. 35 at 17–19. Witmer did not include these claims in his complaint, and such claims  
11 are beyond the jurisdiction of this Court in the absence of a federal claim. Therefore, the  
12 Court declines to address these issues.

#### 13 IV. ORDER

14 Therefore, it is hereby **ORDERED** that GLMH's motion for summary judgment  
15 (Dkt. 29) is **GRANTED**, the Clerk shall enter judgment in favor of GLMH, and  
16 Witmer's *in forma pauperis* status is revoked for the purposes of appeal.

17 Dated this 23rd day of March, 2016.

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20 BENJAMIN H. SETTLE  
21 United States District Judge  
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